CAR - Contractors all risks insurance

Contents

1. What is CAR Insurance? → Saiba mais
2. Who is this type of insurance aimed at? → Saiba mais
3. What does CAR Insurance typically cover? → Saiba mais
4. What are the advantages of taking out CAR Insurance? → Saiba mais
5. What risks are typically covered? → Saiba mais
6. And what are the typical exclusions? → Saiba mais
7. Can CAR Insurance cover design errors? → Saiba mais
8. Can CAR Insurance cover damage that occurs after the project is completed? → Saiba mais
9. What is the advantage of including cross-liability cover in CAR Insurance? → Saiba mais
10. Does CAR Insurance cover intentional acts or omissions? → Saiba mais
11. What is the difference between CAR Insurance and third-party liability insurance for construction from the contractor's perspective? → Saiba mais

1. What is CAR Insurance?

Contractors All Risks insurance, referred to here as CAR Insurance[1] covers the risks involved in construction work, including building, renovation, and refurbishment projects.

2. Who is this type of insurance aimed at?

Building owners or contractors typically take out Car Insurance to cover damage to the building site and property, as well as liability for damage or injuries caused to third parties during the execution of the project.

3. What does CAR Insurance typically cover?

CAR Insurance is usually taken out in connection with a specific construction project. In such cases, the policy only covers the risks associated with carrying out that particular project..

The term 'Contractors All Risks Insurance' does not mean that all construction risks are actually covered. It simply refers to a type of policy that does not usually list every covered risk, but instead focuses on the excluded risks.

Although this type of insurance typically covers a wider range of risks than a standard policy, there are still exclusions to bear in mind, as explained in more detail in point 6 below.

4. What are the advantages of taking out CAR Insurance?

Although CAR Insurance is not mandatory under Portuguese law, it is strongly recommended due to its comprehensive coverage and the specific nature of construction activities and their associated financial risks.

Construction projects have become increasingly complex in recent years, both technically and in terms of the growing number of stakeholders involved at every stage of the process.

Construction risks have also become more difficult to manage and resolve, as the most common incidents often have multiple causes and involve shared responsibility.

A growing number of risks in connection with construction and infrastructure projects are faced by contractors, owners, developers, engineers, architects, designers, funders and investors. These include inflation, high financing costs, geopolitical uncertainty, supply chain disruptions, extreme weather, labour shortages, cyber incidents and an ever-changing regulatory and legal landscape.

Taking out CAR Insurance helps reduce the risk of financial instability and costly legal disputes between the parties or with third parties. It also helps to ensure that work can continue without major delays or expensive interruptions.

1 You may also come across this type of insurance referred to as “Construction All Risks”, although this is less common

5. What risks are typically covered?

As a rule, CAR Insurance policies cover the following risks[2]:

i) Fire, lightning strikes and explosions caused by lightning

ii) Natural events (earthquakes, storms, tornadoes, typhoons, cyclones)

iii) Accidents resulting from design errors, faulty workmanship and defective materials

iv) Strikes, assaults and riots

v) Acts of vandalism and malicious damage

vi) Theft or burglary

vii) Additional costs for debris removal

viii) Additional costs for overtime and special freight

ix) Basic or extended maintenance

x) Damage to neighbouring properties

xi) Damage to entrusted goods

xii) Machinery breakdown

xiii) Glass breakage

xiv) Loss of profit or business interruption

xv) Third-party civil liability

xvi) Cross third-party civil liability

xvii) Professional third-party civil liability i.e. errors and omissions in the exercise of technical duties

6. And what are the typical exclusions?

Certain risks are commonly excluded from CAR Insurance[3] cover, in particular:

i) Flooding

ii) Explosions caused by the use of explosives or pyrotechnic materials

iii) Nuclear accidents

iv) Breakage of fragile items

2 Cover varies depending on the insurance product and the insurance company in question. Additional cover may also be added to the original policy at the request of the policyholder.
3 Exclusions vary depending on the insurance product and the insurance company in question.

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v) Ground subsidence and landslides

vi) Damage caused by rodents or pests

vii) Pollution

viii) Terrorist attacks

Exclusions under CAR Insurance are extremely important and should be carefully reviewed before taking out a policy.

In some cases, the specific nature of a project may require certain standard exclusions to be removed to ensure that the associated risks are covered.

For example, consider a dam construction project where the CAR insurance policy excludes damage caused by ground subsidence. Given the nature of the project, there is a realistic chance that subsidence could occur during construction. Therefore, it is up to the insured party to assess the likelihood of such risks based on the project's specific features and ensure they are properly covered by the insurance policy.

7. Can CAR Insurance cover design errors?

One area that often raises questions – and is particularly important – is coverage for damage resulting from design errors. These are flaws or defects caused by technical mistakes made during the design phase of a project that may not be detectable during construction.

Design errors can lead to significant damage or loss for both contractors and project owners alike. Examples include structural damage, leaks, cracks and functional issues that only become apparent once work has begun or even after it is completed.

When included in a CAR Insurance policy, design error coverage typically applies to damage caused by (i) design flaws, (ii) miscalculations, (iii) the use of unsuitable materials, or (iv) errors in execution. It generally covers, among other things, the costs of demolishing and rebuilding the affected parts of the project, work interruptions due to the need to correct the design, and third-party damage arising directly from the design error.

Given the increasing technical complexity of construction work and the variety of specialisms involved, the risk of technical failures or incompatibilities between the design and execution can be considerable in terms of the resulting loss and damage, and the associated costs. It is therefore a prudent and strategic decision to ensure that CAR Insurance policies include this coverage, especially when the project has been preceded by a formal design phase.

However, not all CAR Insurance policies include coverage for design errors as part of their standard terms. Therefore, in such cases, it is essential that this coverage is specifically negotiated and added to the policy.

8. Can CAR Insurance cover damage that occurs after the project is completed?

CAR Insurance policies usually end when the project owner provisionally accepts the work.

However, it is usually possible to extend the coverage period by taking out additional or complementary cover. This extension can help protect the warranty period under the contractual relationship between the parties and ensure that damage or loss that arises after completion - but results from actions or omissions during construction – is also covered.

Alongside this extension, it is also important to consider coverage for hidden defects i.e. faults in the construction that are not immediately detectable after completion but may only become apparent over time. These defects may result from design errors, the use of unsuitable materials or construction faults. They can compromise the safety and functionality of the project. Without this cover, the cost of repairing structural defects can be extremely high and may fall directly on the contractor or project owner. Such defects can also lead to disputes over who is responsible for the repairs.

When combined with an extended coverage period, hidden defects insurance can help avoid major financial impacts, as these types of problems often only come to light years after completion.

Taking out this type of additional cover can be highly beneficial, helping to prevent disputes over warranty claims and reducing reputational risk, particularly for contractors. It also helps to ensure the long-term safety and quality of the project.

9. What is the advantage of including cross-liability cover in CAR Insurance?

Cross-liability cover ensures compensation for damage or loss caused not only to third parties but also between the insured parties themselves, resulting from the actions of any of the other insured parties.

For this cover to apply, the various parties involved in the project must be included in the policy as insured parties. This means that each party can be treated as a third party for liability purposes, as if they were insured under a separate third-party liability policy.

This is advantageous given the complexity of construction projects and the various roles played by different parties at different stages. For example, it provides cover in cases where the project owner causes damage to the contractor, or vice versa, including damage involving subcontractors[4], not just damage suffered by external third parties outside the contractual relationship.

10. Does CAR Insurance cover intentional acts or omissions?

As a general rule, CAR Insurance does not cover damage resulting from intentional acts or omissions. This means that if an incident is caused by the deliberate actions of one of the parties involved in the project, the insurer may refuse to pay compensation. This exclusion reflects a core principle of insurance: insurance covers unforeseen risks, not damage caused on purpose[5].

However, it is possible to negotiate with the insurer to include certain types of cover that would normally be excluded, such as in this case. Nevertheless, even with this type of insurance, truly intentional acts (such as fraud) are unlikely to be covered by any insurance policy.

It is also important to note that adding extra cover typically increases the insurance premium, as it reflects a higher level of risk for the insurer.

4 This does not prevent subcontractors from taking out their own CAR or third-party liability insurance policies. However, including them as insured parties or beneficiaries under the policies taken out by the contractor or project owner provides broader protection for damage caused by the subcontractor to the contractor and/or project owner, and vice versa, not just damage caused to third parties.

5 It should also be noted that, in some cases, CAR Insurance may exclude damage resulting from gross negligence. In other words, if an incident is caused by gross negligence on the part of one of the parties involved in the project, the insurer may also refuse coverage and, as a result, decline to pay compensation.

11. What is the difference between CAR Insurance and third-party liability insurance for construction from the contractor's perspective?

The key difference between CAR Insurance and third-party liability insurance, referred to here as TP Insurance, lies in the scope of coverage and the purpose of each policy.

CAR Insurance is project-specific. It covers risks related to the execution of a particular construction project. It is only valid for the duration of the project and, sometimes, for a period after completion to cover hidden defects. The timeframe is directly linked to the project's schedule and any maintenance period. The purpose of this insurance is to protect the construction project itself, ensuring that unforeseen events do not result in financial losses for contractors or project owners.

By contrast, taking out third-party liability insurance for construction work carried out by a particular contractor covers damage caused to third parties by the work itself. It is usually an ongoing policy that is automatically renewed, and taken out by construction companies to protect against day-to-day operational risks, regardless of the specific projects underway. It typically offers narrower coverage than CAR Insurance, although it can include specific add-ons. The focus is on the contractor's third-party liability, and it usually does not cover damage to the project itself.

Compared to TP Insurance, CAR Insurance is more specific and comprehensive. It protects a particular construction project against a wide range of risks, including material damage to the works and equipment, as well as third-party civil liability connected to the project. In addition, it generally covers higher capital costs, as it is adjusted to the total value of the specific work. TP Insurance tends to involve lower coverage amounts and a more limited range of cover, as it is designed to protect third parties affected by the contractor's activity, not the project itself, and is rarely adapted to the features of a particular project. However, it is possible to contract additional specific coverage, as mentioned above.

Depending on the contractor's needs and operating model, it may be sensible to rely solely on TP Insurance (possibly with additional specific cover) rather than taking out a separate CAR Insurance policy for each project. This is particularly the case if the contractor handles a high volume of relatively small-scale or uncomplicated projects.

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